IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WP(C).No. 34089 of 2006(G)

PETITIONER:

M/S.A.J.SECURITY SERVICE,
REP. BY ITS PROPRIETOR, LT.COL.(RETD.) A.J.GEORGE,
A.J.SECURITY SERVICES, 35/2619, E 2ND FLOOR,
T.D.SANNIDHI ROAD, THAMMANAM, KOCHI-682 032.

BY ADV. SRI.ALEXANDER THOMAS

RESPONDENTS:

1. **DIRECTOR GENERAL OF RESETTLEMENT,**
   DIRECTORATE GENERAL RESETTLEMENT (DGR),
   MINISTRY OF DEFENCE, GOVT. OF INDIA,
   WEST BLOCK-IV, RK PURAM, NEW DELHI-110 066.

2. **BHARATH SANCHAR NIGAM LTD (BSNL),**
   REP. BY ITS GENERAL MANAGER (TELECOM),
   BSNL, ALLEPPEY TELECOM DISTRICT,
   EAST OF PITCHU IYER JUNCTION, ALAPPUZHA-688 011.

BY ADV. SRI.M.P.KRISHNAN NAIR
SRI.C.S.RAMANATHAN, SC, BSNL
SRI.N.ANILKUMAR, ADDL.CGSC
SRI.BABU KARUKAPADATH, SC, GCDA
SRI. AJITH KRISHNAN, ADDL.CGSC
SRI.MATHEWS K.PHILIP , SC.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.34089/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE LETTER NO.2112/SA/BSNL/EMP DT. 26.4.01 ISSUED BY GOVT.OF INDIA.

EXT.P2:- COPY OF THE LETTER NO.F.260-2/2001-PERS IV DT. 20.7.01 ISSUED BY BSNL HEAD OFFICE.

EXT.P3:- COPY OF THE JUDGMENT DT. 28.11.03 IN WP(C) 37374/03.

EXT.P4:-COPYOF THE PROCEEDINGS NO.2112/SA/BSNL/1356/14241126/EMP DT. 5.5.04 OF THE 1ST RESPONDENT.

EXT.P5:- COPY OF THE ORDER NO.E.31/ENGE/III/20 DT.17.6.04, ISSUED BY R2.

EXT.P6:- COPY OF THE NO.E31/ENGE/III/23 DT.24.6.04, ISSUED BY R2.

EXT.P7:- COPY OF THE NO.E.31/ENGAGEMENT / III/87 DT. 17.12.04, ISSUED BY R2.

EXT.P7(a):- COPY OF THE NO.E.31/ENGE/III 05-06/30 DT. 22.12.05, ISSUED BY R2.

EXT.P8:- COPY OF THE REPORT DT. 30.1.06 SENT BY RE TO R1.

EXT.P9:- COPY OF THE NO.E.8ENGE/IV/-06-07-52 DT. 13.12.06, ISSUED BY R2.

EXT.P10:- COPY OF THE ORDER DT. 22.2.07 TO R1.

EXT.P11:- COPY OF THE ORDER DT. 14.12.06 OF R1.

EXT.P12:- COPY OF THE ORDER DT. 7.3.06 OF R1.

EXT.P13:- COPY OF THE JUDGMENT DT. 24.11.06 IN WP 31228/06.

W.P.(C) NO.34089/2006

RESPONDENTS EXHIBITS

EXT.R1(a):- COPY OF THE DGR RULES.

EXT.R1(b):- COPY OF THE REPORT SUBMITTED ZONAL DIRECTOR, RE-SETTLEMENT, PUNE DT. 18.4.06.

EXT.R1(a):- COPY OF THE LETTER NO.4(20)US (RES)/93 DT.04.FEB 94.

EXT.R1(b):- COPY OF THE LETTER NO.6/22/93-LFE (SC/ST) DT. 11.NOV. 1994.

EXT.R1(c):- COPY OF THE LETTER NO.6/22/93-DPE(SC/ST CELL) DT. 18 MAR. 1996.

EXT.R1(d):- COPY OF THE LETTER NO.6/22/93/GL-15/DPE(SC/ST) DT. 01.FEB 1999.

EXT.R1(e):- COPY OF THE LETTER NO.2112/SA/BSNL/1091/1559/664/EMP. DT. 13 OCT.2006.

EXT.R1(f):- COPY OF THE ORIGINAL PUBLICATION OF DGR INSTRUCTIONS DT. 3.5.07.

EXT.R1(g):- COPY OF THE INDIVIDUAL DECLARATION OF THE PETITIONER.

EXT.R3(a):- COPY OF THE LETTER NO.2112/SA/BSNL/1091/1559/664 EMP DT. 13.10.06, ISSUED BY DGR.

EXT.R3(b):- COPY OF THE LETTER NO.E-8/ENGAGE/IV/06-07/55 DT. 14.12.06, ISSUED BY BSNL, ALAPPUZHA.

EXT.R3(c):- COPY OF THE COUNTER AFFIDAVIT DT. 30.1.07 FILED ON WP(C) NO.31070/06 WITH EXT.

/TRUE COPY/

P.A. TO JUDGE

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S. SIRI JAGAN, J.

W.P.(C)NO.34089 OF 2006

DATED THIS THE 31st DAY OF JULY, 2007

JUDGMENT

The petitioner is an agency which provides security services to various public sector undertakings. The agency is stated to be employing ex-service men for providing security services to public sector undertakings. As per the guidelines applicable, such agencies have to be sponsored by the Directorate General of Re-settlement (DGR). These agencies should also be empanelled with the DGR. Those security services agencies empanelled and sponsored by the DGR only are entitled to be employed by the Public Sector undertakings for engaging their security services. Initially such engagement shall be only for a period of two years. By decisions of this Court it is now confirmed that such agencies are entitled to be re-sponsored for another two years also, subject of course to the guidelines prescribed for such re-sponsoring.

2. The petitioner was engaged for the purpose of providing security services to the 2nd respondent Bharat Sanchar Nigam Ltd. They completed the initial two years. They applied for re-sponsorship. The BSNL by Ext.P8 recommended re-sponsoring. Thereafter by Ext.P9, the petitioner was informed that the services of the petitioner

stand terminated with effect from 1.1.2007. The petitioner is challenging Ext.P9 issued by the 2nd respondent. According to the petitioner, they have provided satisfactory services to the 2nd respondent and there is no reason for any complaint against them. They would further contend that Ext.P9 has been issued only because the DGR has refused to re-sponsor the petitioner's establishment for continuation after the initial two years. According to them, they had never been informed about any deficiencies and therefore, they are not aware of any reasons for such refusal for re-sponsoring. The petitioner, therefore, seeks the following reliefs.

> "(a) To declare that the action of the respondents in not granting extension of allotment of work referred to in Ext.P7(a) by further two years from 1.1.2007 is illegal and improper.
>
> b) to call for the records and to issue a writ of Certiorari or any other appropriate writ, order or direction, quashing Ext.P9.
>
> c) To issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents not to allot the work of security service coverage in the work sites of the 2nd respondent allotted to the petitioner in pursuance of ExtP5 & P6, Exts.P7, P7(a) to any person or agency other than the petitoner, for another 2 year period from the date of expiry of the respective initial two year period.
>
> d) To issue a Writ of Mandamus or any other appropriate writ, order or direction, directing the respondents to allot to the petitioner the aforementioned work of security coverage in the work sites of the 2nd respondent allotted to the petitioner in pursuance of Ext.P5,Ext.P6,Ext.P7,P7(a) for further 2 year period from the date of expiry of the respective initial two year period".

3. The 1st respondent has pointed out three deficiencies, which would render them ineligible for re-sponsorship as the reason for the petitioner being not re sponsored.

4. I have considered the rival contentions in detail. Ext.P8 is the recommendation of the 2nd respondent, BSNL in respect of the sponsorship of the petitioner. In the same, they stated as follows.

> "1. Re-sponsorship request for AJ SECURITY SERVICES is forwarded as contract is terminating on 30 June 2006. The Agency has provided 51 guards from 01 July 2004 onwards till 30 June 2006. Further increment of some stations were awarded as per requirement from time to time.
>
> 2. It is certified that:-
>
> a. The Agency is employing 100% Ex-servicemen.
>
> b. There are no complaints pending against the Agency.
>
> c. Agency is making payment to all employees by cheque in presence of representative of BSNL, proofs of which are submitted to our office.
>
> d. Agency was allotted contract based on DGR sponsorship letter No.2112/SA/BSNL/1356/1424/ 1126/Emp dated 05 May 2004 (copy enclosed).No direct contract was given.
>
> e. The Agency has only completed two years of services since materialization of contract.

f. Agency has been giving satisfactory performance and is recommended for re-sponsorship".

5. As such, there is no complaint on the part of the 2nd respondent against the petitioner. In the statement submitted on behalf of the 1st respondent in paragraph 4, it is stated thus:

> "4. As per investigation report submitted by Zonal Director, RE-settlement, Pune, who is the Monitoring Authority as per Rules has investigated and submitted a report on 18.4.2006. True copy of the report is produced and marked as Exhibit R1(B). In page 4 of Report, the monitoring Authority has identified the following complaints.
>
> a) He did not have a proper office.
> b) As per information available with DGR he crossed the limit of quota of guard.
> c) He was not sending reports and returns correctly as per guidelines.
>
> These acts are totally against the guidelines Ext.R1(A).
>
> Therefore he was not re-sponsored for Alleppey even though there was a recommendation. As per para 28 of DGR's decision in this regard will be final and binding and Recommendation by the Employer by itself is not enough for the sponsorship. Since he has violated the norms his name was not re -sponsored".

From paragraph 4, it is very clear that these conclusions were arrived at on the basis of Ext.R1(b) report. In Ext.R1(b) report in relation to the petitioner, what is stated is as follows:

"M/s. A.J. Security Services Proprietor Col.A.J. George (Retd)

(a) Met the proprietor in the address given – no office or board exist. Operating from a table in someone else's office. Claims that he is in the process of shifting his office to Jawaharlal Nehru Stadium.

(b) No document available for perusal at site.

(c) Col. A.J. George (Retd) appears to be running the firm himself.

From a reading of Ext.R1(b) report, I could not find anywhere there any reasons mentioned as (b) and (c) in paragraph 4 of the statement of the 1st respondent. Going by Ext.R1(b) report of the Monitoring Authority, it is clear that the petitioner could not have been held guilty of reasons (b) and (c). Now the only question remaining is as to whether the petitioner could be refused to be a re-sponsorship on the basis of ground (a). Ground (a) is only that he did not have a proper office. In Ext.R1(b) itself, it is noted that the petitioner claimed that he is in the process of shifting his office to Jawaharlal Nehru Stadium. Regarding that statement nothing is mentioned in Ext.R1(b), as to whether the same is correct or not. The petitioner also submits that he has obtained a new office on lease, which according to the petitioner is not denied anywhere by the respondents. By virtue of interim orders in this case, the petitioner has been continuing for the better part of the second term of two years also. Only a few more months are left for

completion of the additional two years. In such circumstances, I do not think that the petitioner should be denied the benefit of continuing the contract for providing security services to the 2nd respondent, especially when the 2nd respondent is perfectly happy with the services provided by the petitioner.

In the above circumstances, I do not think that the present arrangement should be disturbed for the balance period out of the second term of two years granted to the petitioner. Accordingly, I quash Ext.P9 and direct the 2nd respondent to continue the petitioner for the balance period of two years also, as if the DGR has re-sponsored the petitioner for the second term of two years also.

The writ petition is disposed of as above.

S. SIRI JAGAN, JUDGE

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